

LEGISLATIVE BILL 56

Approved by the Governor March 20, 2003

Introduced by Byars, 30

AN ACT relating to the State Board of Health; to amend sections 71-2602, 71-2603, 71-2606, 71-2607, and 71-2610, Reissue Revised Statutes of Nebraska, and sections 71-2601 and 71-2610.01, Revised Statutes Supplement, 2002; to provide and change powers and duties; to change provisions relating to membership, terms, removal, and meetings; to provide immunity from liability as prescribed; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 71-2601, Revised Statutes Supplement, 2002, is amended to read:

71-2601. (1) The State Board of Health shall promote and protect the health and safety of all people in Nebraska.

(2) The board shall consist of seventeen members to be appointed by the Governor with the consent of a majority of the members of the Legislature. Two members shall be licensed to practice medicine and surgery in this state, one member shall be licensed to practice dentistry in this state, one member shall be licensed to practice optometry in this state, one member shall be licensed to practice veterinary medicine in this state, one member shall be licensed to practice pharmacy in this state, two members shall be licensed to practice nursing in this state, one member shall be licensed to practice osteopathic medicine and surgery or as an osteopathic physician in this state, one member shall be licensed to practice podiatry in this state, one member shall be licensed to practice chiropractic in this state, one member shall be licensed to practice physical therapy in this state, one member shall be a professional engineer in this state, one member shall be an administrator of a hospital in this state which is licensed under the Health Care Facility Licensure Act, one member shall be a credentialed mental health professional, and two members shall be public members who at all times are public-spirited citizens of Nebraska interested in the health of the people of the State of Nebraska and not less than twenty-one years of age. If a member fails at any time to meet the qualifications for the position for which he or she was appointed, such member may be removed by the Governor pursuant to section 71-2603.

(3) The Governor shall also be an ex officio member of such board but shall be permitted to vote on matters before the board only when necessary to break a tie.

Sec. 2. Section 71-2602, Reissue Revised Statutes of Nebraska, is amended to read:

71-2602. The Governor shall appoint the members of the State Board of Health. Each member of the board serving on ~~September 9, 1993,~~ the operative date of this act shall hold office for the remainder of the term for which he or she was appointed until August 1 of the calendar year in which his or her term would otherwise expire. Appointments made for the succeeding members shall be for terms of five years. The term of office of each member of the board shall expire on ~~September 14~~ August 1 of the appropriate year. If a vacancy occurs prior to the expiration of a term, the Governor shall appoint a successor with similar qualifications for the remainder of the unexpired term. No member of the board shall serve more than two consecutive, full terms. If the Legislature is not in session when an appointment is made by the Governor, the member shall take office and act as a recess appointee until the Legislature convenes.

Sec. 3. Section 71-2603, Reissue Revised Statutes of Nebraska, is amended to read:

71-2603. Members of the State Board of Health may be removed by the Governor for inefficiency, neglect of duty, failure to maintain the qualifications for the position for which appointed, or misconduct in office, but only after delivering to the member a copy of the charges and affording ~~him~~ the member an opportunity of being publicly heard in person or by counsel in his or her own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor. If such member ~~shall be~~ is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and ~~his~~ the Governor's findings thereon, together with a complete record of the proceedings.

Sec. 4. Section 71-2606, Reissue Revised Statutes of Nebraska, is amended to read:

71-2606. ~~The~~ In the last calendar quarter of each year, the members of the State Board of Health shall meet in January of each year and shall elect a ~~chairman~~ chairperson of the board from ~~its~~ the members, and such other officers, including a ~~vice-chairman~~, as ~~it~~ vice-chairperson and a secretary, as the board deems necessary. In case of the death, resignation, or other permanent absence of the ~~chairman~~ chairperson of the board, the ~~vice-chairman~~ vice-chairperson shall assume the office of ~~chairman~~ chairperson and the members of the ~~State Board of Health~~ board at the next regular meeting of the board, or at a special meeting of the board pursuant to a call signed by five members, of which the other members shall have at least three days' notice, shall elect a new ~~chairman~~ chairperson of the board from ~~its~~ the members, and such other new officers as ~~it~~ the board deems necessary.

Sec. 5. Section 71-2607, Reissue Revised Statutes of Nebraska, is amended to read:

71-2607. The State Board of Health shall meet at least once each quarter, and at such other times as it deems necessary. Special meetings may be held upon the call of the ~~chairman~~, chairperson or pursuant to a call signed by five other members, of which the ~~chairman~~ chairperson and the other members of the board shall have at least three days' notice. All regular meetings shall be held in suitable offices to be provided in the ~~State Capitol~~ state office building described in section 81-1108.37 or elsewhere. A majority of the members of the board shall constitute a quorum for the transaction of business. Every act of a majority of the members of the board shall be deemed to be the act of the board. All meetings shall be open to the public. The minutes of the meetings shall show the action of the board on matters presented, and shall be open to public inspection.

Sec. 6. Section 71-2610, Reissue Revised Statutes of Nebraska, is amended to read:

71-2610. (1) The State Board of Health shall advise the ~~department~~ Department of Health and Human Services Regulation and Licensure regarding:

~~(1) (a) Rules and regulations for the government of the Department of Health and Human Services Regulation and Licensure including those required pursuant to section 71-115.01 department;~~

~~(2) (b) The policies of the department as they relate to support provided to the board;~~

~~(c) The policies of the department concerning the professions and occupations described in section 71-2610.01;~~

~~(d) Communication and cooperation among the professional boards; and~~

~~(e) Plans of organization or reorganization of the department.~~

(2) Upon request of the Policy Cabinet, the board shall advise them on matters pertaining to public health. ~~Department of Health and Human Services Regulation and Licensure;~~

~~(3) Health needs for the state;~~

~~(4) An educational health program throughout the state; and~~

~~(5) Plans of organization or reorganization of the Department of Health and Human Services Regulation and Licensure.~~

All funds rendered available by law, including funds already collected for such purposes, may be used by the department in administering and effecting such purposes.

Sec. 7. Section 71-2610.01, Revised Statutes Supplement, 2002, is amended to read:

71-2610.01. ~~(1) The State Board of Health shall: have the power and duty to:~~

~~(a) (1) Adopt and promulgate rules and regulations for the government of the professions and occupations licensed, certified, registered, or issued permits by the Department of Health and Human Services Regulation and Licensure, including rules and regulations necessary to implement laws enforced by the department. These professions and occupations include, but are not limited to, are those subject to the Advanced Practice Registered Nurse Act, the Asbestos Control Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Occupational Therapy Practice Act, the Radiation Control Act, the Residential Lead-Based Paint Professions Certification Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-102, 71-3702 to 71-3715, 71-4701 to 71-4719, and 71-6053 to 71-6068;~~

~~(2) Serve in an advisory capacity for other rules and regulations adopted and promulgated by the department, including those for health care facilities and environmental health services;~~

~~(3) Carry out its powers and duties under the Nebraska Regulation of~~

Health Professions Act;

(4) Appoint and remove for cause members of health-related professional boards as provided in sections 71-111, 71-112, and 71-118;

(5) At the discretion of the board, help mediate issues related to the regulation of health care professions except issues related to the discipline of health care professionals; and

(6) Have the authority to participate in the periodic review of the regulation of health care professions. and

~~(b) Determine the policies of the department concerning the professions and occupations listed in this section.~~

~~(2) All funds rendered available by law may be used by the board in administering and effecting such purposes.~~

Sec. 8. No member of the State Board of Health shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such board while acting as an agent of the state if such board member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Sec. 9. This act becomes operative on October 1, 2003.

Sec. 10. Original sections 71-2602, 71-2603, 71-2606, 71-2607, and 71-2610, Reissue Revised Statutes of Nebraska, and sections 71-2601 and 71-2610.01, Revised Statutes Supplement, 2002, are repealed.